

1 WILLIAM H. SHIBLEY
2 California State Bar No. 56093
3 **LLOYD & MOUSILLI, PLLC**
4 11807 Westheimer Road
5 Suite 550 PMB 944
6 Houston, TX 77077
7 Tel: (512) 609-0059
8 Fax: (281) 783-8565
9 *disputes@lloydmosilli.com*

10
11 **ATTORNEYS FOR JURISDICTIONAL
12 DEFENDANTS**

13
14
15 **UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION**

18
19 **DAVID HOUGH; ET AL**

20
21 *Plaintiffs,*

22
23 v.

24
25 **RYAN CARROLL; ET AL**

26
27 *Defendants.*

28 Case No.: 2:24-cv-02886

Assigned for all purposes to:
JUDGE WESLEY L. HSU

**JURISDICTIONAL DEFENDANTS
RYAN CARROLL; MAX K. DAY;
MAX O. DAY; MICHAEL DAY;
YAX ECOMMERCE LLC;
PRECISION TRADING GROUP,
LLC; AND WA DISTRIBUTION
LLC'S REPLY IN SUPPORT OF
MOTION FOR LEAVE TO
RELEASE FUNDS**

Hearing: 12/13/24, 1:30 PM PT

Action Filed: April 9, 2024
Trial Date: N/A

1 COME NOW **SPECIALLY APPEARING JURISDICTIONAL**
2 **DEFENDANTS RYAN CARROLL; MAX K. DAY; MAX O. DAY; MICHAEL**
3 **DAY; YAX ECOMMERCE LLC; PRECISION TRADING GROUP, LLC; and**
4 **WA DISTRIBUTION LLC**, and hereby files *Jurisdictional Defendants' Reply in*
5 *Support of Motion for Leave to Release Funds* ("Motion") and respectfully shows
6 the Court as follows:

9 **MEMORANDUM AND POINTS OF AUTHORITIES**
10

11 1. Plaintiffs' *Response* amounts to twenty-four (24) pages of unsubstantiated and
12 conclusory allegations, along with a fair amount of hearsay. The only "evidence" put
13 forward in the *Response* is the declaration of Nico Banks ("Mr. Banks"). *See* Dkt.
14 158-1, Declaration of Nico Banks Supporting Plaintiffs' Opposition to Jurisdictional
15 Defendants' Motion for Leave to Release Funds ("Declaration"). Most of the
16 information contained in Mr. Banks' Declaration is inadmissible under the Federal
17 Rules of Evidence. The Declaration is composed largely of 1) information that is not
18 within the personal knowledge of Mr. Banks and, 2) hearsay that he presents to show
19 the truth of the matter asserted. FED. R. EVID. 801(C). Paragraphs 1-5 each contain
20 assertions of which Mr. Banks has no personal knowledge. Paragraphs 6 and 7
21 exhibit screenshots of emails highlighted by Mr. Banks to show the truth of the
22 matter(s) asserted. Paragraphs 8-14 all contain assertions of which Mr. Banks has no
23
24
25
26
27
28

1 personal knowledge. Paragraph 18 references hearsay emails with Tacy Zysk that
2 are offered to show the truth of the matter(s) asserted.
3

4 2. Accordingly, Jurisdictional Defendants ask that the court strike and/or
5 disregard paragraphs 1-14 and 18 of Mr. Banks' Declaration as inadmissible under
6 the Federal Rules of Evidence.
7

8 3. The precedent cited by Plaintiffs relies heavily on litigation involving the
9 Federal Trade Commission ("FTC") and the Securities Exchange Commission
10 ("SEC"), both federal agencies. Each of these cases is distinguishable. Plaintiffs
11 have raised none of the claims upon which these decisions are based. *See S.E.C. v.*
12 *Quinn*, 997 F.2d 287 (7th Cir. 1993) (Claims based on international securities fraud);
13 *Commodity Futures Trading Comm'n v. Noble Metals Int'l, Inc.*, 67 F.3d 766 (9th
14 Cir. 1995) (Claims based on 7 U.S.C.S. § 6); *F.T.C. v. World Wide Factors, Ltd.*,
15 882 F.2d 344 (9th Cir. 1989) (15 U.S.C.S. § 45); *Fed. Trade Comm'n v. Noland*,
16 475 F. Supp. 3d 992 (D. Ariz. 2020) (Allegation of an illegal pyramid scheme,
17 which are generally prosecuted under the Federal Trade Commission Act); *F.T.C. v.*
18 *Ideal Fin. Sols., Inc.*, No. 2:13-CV-00143-JAD-GW, 2014 WL 4541191 (D. Nev.
19 Sept. 9, 2014) (Allegations that defendants taken money from consumers' bank
20 accounts or billed consumers' credit cards without knowledge, consent or notice);
21 *Fed. Trade Comm'n v. Automators LLC*, No. 23-CV-1444-BAS-LSC, 2023 WL
22 6373069 (S.D. Cal. Aug. 11, 2023) (Violations of the Federal Trade Commission
23 Act and the Consumer Review Fairness Act).
24
25

1 4. Plaintiffs further cite filings in multiple cases, each of which also appear to
2 involve claims brought by the FTC under the Federal Trade Commission Act and are
3 therefore also distinguishable from the case at hand. *See FTC v. Automators, LLC*,
4 Case No. 3:23-cv-01444 (S.D. Cal. 2023); *FTC v. THEFBAMACHINE, Inc.*, Case
5 No. 24-cv-06635 (D.N.J. 2024); *FTC v. Ascend Capventures Inc.*, Case No. 24-cv-
6 07660 (C.D. Cal. 2024); *FTC v. AWS*, Case No. 18-cv-00442 (D. Nev. 2018).
7

8 5. Plaintiffs inexplicably argue that Jurisdictional Defendants have not proved
9 their case, yet formal discovery has not yet opened in this matter. The Court allowed
10 for expedited discovery on May 1, 2024. Dkt. 42. The Court's order was limited to
11 allowing Plaintiffs to conduct expedited discovery; therefore, Jurisdictional
12 Defendants must wait until the formal discovery period opens. So, Plaintiffs
13 arguments as to Jurisdictional Defendants not having proved their defense appears
14 based upon a deep procedural misconception.
15

16 6. Plaintiffs also appear confused by the fact that defendants may fully participate
17 in litigation to defend against claims raised, even after a preliminary injunction has
18 been entered. Due Process requires that the Jurisdictional Defendants be permitted the
19 ability to defend themselves and pay corresponding defense costs. In this matter, the
20 Preliminary Injunction itself contemplates that Jurisdictional Defendants will have
21 costs and attorney fees associated with this matter. Dkt. 49, pp. 9, 11.
22

23 7. Plaintiffs further spend an entire page discussing communications between
24 counsel. Statements and communications of counsel do not constitute evidence and
25

1 the attempt to reference those communications to show the truth of the matter is
2 violative of the Federal Rules of Evidence. FED. R. EVID. 801(c).
3

4 8. Puzzlingly, Plaintiffs go on to argue that Jurisdictional Defendants' lack of
5 funds to pay Mr. Banks' attorney fees somehow weighs against the release of funds
6 to pay legal costs associated with this litigation. Plaintiffs actively oppose any funds
7 being released to cover costs of arbitrations that predate this action and costs to
8 sustain this action yet argue that Mr. Banks' bills should be paid. The entire point of
9 this *Motion to Release Funds* is to allow Jurisdictional Defendants to meet their
10 obligations associated with the costs of litigating these matters.
11

12 9. At hearing, the Court indicated that it would allow Plaintiffs to obtain
13 reasonable fees and costs; however, Plaintiffs did not bother to move the Court to
14 award fees and costs. FED.R.CIV.PROC. 37(a)(5)(A). Rather than make a showing
15 before the Court and obtain an order, Plaintiffs' counsel "sent Jurisdictional
16 Defendants an invoice." *Response to Motion to Release Funds*, p. 17. Further,
17 because Mr. Banks failed to submit his invoice to the Court to obtain a ruling,
18 Jurisdictional Defendants had no opportunity to contest the reasonableness,
19 appropriateness, and/or necessity of the charges. Clearly, such an opportunity was
20 required since Mr. Banks' Declaration attaches a bill including over five-thousand
21 eight-hundred dollars (\$5,800.00) of Mr. Banks' and Richard Nervig's personal
22 expenses (including a stay at the luxury Omni Hotel). While it may be common for
23 attorneys to contract with their clients to pay the attorney for travel time and
24
25
26
27
28

1 expenses, those charges cannot be described as attorney fees or court costs. Plaintiffs
2 may well have agreed to pay Mr. Banks and Mr. Nervig for the over five hours it took
3 to fly various places; however, flight time cannot be described as reasonable or
4 necessary attorney fees.

5 10. Plaintiffs argue that Jurisdictional Defendants should have agreed to Plaintiffs'
6 proposed motion to stay all other proceedings. Almost every action that Plaintiffs
7 propose to stay predates the instant case. Only one arbitration demand was made the
8 month after Plaintiffs filed this action.

9 11. *Brett and Jennifer Sanner v. Yax Ecommerce LLC d/b/a Wealth Assistants LLC*
10 was initiated in December of 2023. *Tyler Davidson v. Yax Ecommerce LLC d/b/a*
11 *Wealth Assistants LLC; and Ryan Carroll* was initiated in Miami Dade County
12 Circuit Court in January of 2024. *Trevor Red v. Yax Ecommerce LLC d/b/a Wealth*
13 *Assistants LLC; and Ryan Carroll* was initiated in Miami Dade County Circuit Court
14 in December of 2023, although arbitration has not yet been initiated. *Stacy Rico and*
15 *Ben Brown v. Ryan Carroll* was initiated in Miami Dade County Circuit Court in
16 December of 2023. *Robert Harris v. Yax Ecommerce LLC d/b/a Wealth Assistants*
17 *LLC, and Ryan Carroll* was initiated by arbitration demand in May of 2024.

18 12. While it is common for parties to care only about their own causes of action at
19 the expense of others, staying the claims of those other claimants after the time and
20 expense they have invested in their cases would work an injustice to them.

1 13. Plaintiffs argue that Jurisdictional Defendants have a duty to explain their
2 desires to obtain separate counsel as though the concept of attorney-client privilege is
3 entirely foreign to them.
4

5 14. Plaintiffs next argue that the Court intended that the \$10,000 monthly spending
6 cap was to be applied to the Jurisdictional Defendants collectively. The sentence
7 quoted, but incorrectly cited, by Plaintiffs is clearly meant to address individual
8 defendants: “The Court is providing ample protection for the Jurisdictional
9 Defendants in allowing them to (1) pay reasonable attorney’s fees, up to \$10,000 a
10 month, (2) pay personal and household expenses up to \$9,000 a month, and (3) seek
11 leave of court for other reasonable expenses.” Dkt. 49, p. 9. It is evident that the
12 Court intended for each individual to pay monthly personal expenses of \$9,000 per
13 party. The Court used the same language in allowing them to pay reasonable attorney
14 fees up to \$10,000 per month; therefore, the most reasonable interpretation is that this
15 language also applies to each individual Jurisdictional Defendant. Just as the multiple
16 individual defendants could not be expected to live collectively on \$9,000 per month,
17 Jurisdictional Defendants could not reasonably be expected to defend themselves
18 collectively on \$10,000 per month.
19
20

21 15. Even if the Court’s language is vague, which Jurisdictional Defendants do not
22 believe it to be, the Court was clear at the preliminary injunction hearing that the
23 \$10,000 was intended to be per party:
24
25

1 MR. SHIBLEY: As to the funds that are already held by the Texas firm in their
2 attorney-client trust account --
3

4 THE COURT: Yes.
5

6 MR. SHIBLEY: -- are those subject to the \$10,000 limit?
7

8 THE COURT: No.
9

10 MR. SHIBLEY: Okay.
11

12 THE COURT: As long as they're being used for, you know, litigation
13 expenses.
14

15 **Dkt. 158-7, May 13, 2024 Hearing Transcript Tr.11:3-11**
16

17 **CONCLUSION**
18

19 Based on the foregoing and for good cause shown, Jurisdictional Defendants
20 respectfully request that this Court 1) strike and/or disregard paragraphs 1-14 and 18
21 of the Declaration of Nico Banks and, 2) grant Jurisdictional Defendants' Motion for
22 Leave to Release Funds for the listed Arbitrations, for the defense of this case, and
23 for such other and further relief to which the Defendants may show themselves to be
24 justly entitled.
25

26 Dated: November 26, 2024.
27

28 Respectfully submitted,
29

30 By: /s/ William H. Shibley
31 William H. Shibley
32

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this Motion contains 1575 words, which complies with the word limit of L.R. 11-6.1

/s/ William H. Shibley
William H. Shibley

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document, and any attachments, will be served to counsel of record, in accordance with the governing rules of procedure regarding service in this court on this **November 26, 2024**, via email as follows:

/s/ William H. Shibley
William H. Shibley